

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
BEAUMONT DIVISION

JAMES JONES, JR.	§	
VS.	§	CIVIL ACTION NO. 1:22cv279
DIRECTOR, TDCJ-CID	§	

ORDER OVERRULING OBJECTIONS AND ADOPTING
THE MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION

Petitioner James Jones, proceeding *pro se*, filed the above-styled petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. The Court previously referred this matter to the Honorable Christine L. Stetson, United States Magistrate Judge, for consideration pursuant to applicable orders of this Court. The Magistrate Judge has submitted a Report and Recommendation of United States Magistrate Judge recommending that the petition be dismissed without prejudice as successive.

The Court has received and considered the Report and Recommendation of United States Magistrate Judge, along with the record and pleadings. Petitioner filed two sets of objections to the Report and Recommendation. The Court must therefore conduct a *de novo* review of the objections in relation to the pleadings and the applicable law.

Petitioner is challenging a 2006 conviction for murder. Title 28 U.S.C. § 2244(b)(3) provides that a second or successive habeas petition challenging the same conviction may not be considered unless the governing court of appeals has granted the petitioner permission to file a successive petition. The Magistrate Judge's recommendation was based on petitioner having filed a prior petition challenging the same conviction,¹ and his not asserting he had received permission from the United States Court of Appeals for the Fifth Circuit to proceed with a second petition.

In his objections, petitioner does not contest the fact that he filed a prior petition challenging the same conviction. Nor does he state he has permission from the Fifth Circuit to proceed with a second petition. As a result, the current petition is successive.

¹ *Jones v. Director, TDCJ-CID*, No. 1:10cv395 (E.D. Tex. Mar. 9, 2011).

ORDER

Accordingly, petitioner's objections [Dkt. 8 and Dkt. 9] are OVERRULED. The findings of fact and conclusions of law of the magistrate judge are correct and the report of the Magistrate Judge [Dkt. 2] is ADOPTED. A final judgment will be entered in accordance with the recommendation of the magistrate judge.

In addition, the Court is of the opinion petitioner is not entitled to a certificate of appealability. An appeal from a judgment denying federal habeas relief may not proceed unless a judge issues a certificate of appealability. *See* 28 U.S.C. § 2253. The standard for a certificate of appealability requires the petitioner to make a substantial showing of the denial of a federal constitutional right. *See Slack v. McDaniel*, 529 U.S. 473, 483-84 (2000); *Elizalde v. Dretke*, 362 F.3d 323, 328 (5th Cir. 2004). To make a substantial showing, the petitioner need not demonstrate that he would prevail on the merits. Rather, he must demonstrate that the issues are subject to debate among jurists of reason, that a court could resolve the issues in a different manner, or that the questions presented are worthy of encouragement to proceed further. *See Slack*, 529 U.S. at 483-84. Any doubt regarding whether to grant a certificate of appealability should be resolve in favor of the petitioner. *See Miller v. Johnson*, 200 F.3d 274, 280-81 (5th Cir. 2000).

Here, petitioner has not shown that the issue of whether his petition is successive is subject to debate among jurists of reason. The factual and legal questions raised have been consistently resolved adversely to his position and the questions presented are not worthy of encouragement to proceed further. As a result, a certificate of appealability shall not issue in this matter.

SIGNED this 27th day of September, 2022.



Michael J. Truncala
United States District Judge